

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re D.B., a Person Coming Under the
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

ELIJAH B.,

Defendant and Appellant.

C062183

(Super. Ct. No. JD225939)

The juvenile court issued an order terminating the parental rights of Elijah B. and selecting adoption as the permanent plan for the child, D.B.¹ (Welf. & Inst. Code, § 366.26,

¹ We do not use an initial for the given name of the father. This impairs readability and leads to confusion for legal researchers and record-keeping, and his name is among the 1,000 most popular birth names during the last nine years (unlike the minor). (*Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1051, fn. 2; *In re Branden O.* (2009) 174 Cal.App.4th 637, 640, fn. 2; *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, fn. 1.)

subd. (b) (1).)²

Elijah B. appeals.³ (§ 395.) He argues that because he did not receive proper notice of his right to writ review of the order setting the permanency planning hearing, he may challenge the juvenile court's failure at that hearing to consider placing the child with him. He also argues that there was insufficient evidence of the child's adoptability. We shall affirm the order.

BACKGROUND

Elijah B. was a noncustodial parent and was not a direct participant in the circumstances giving rise to the juvenile court's assumption of jurisdiction over the child. We will accordingly limit our account of the facts and proceedings to those essential to this appeal.

In May 2007, the Sacramento County Department of Health and Human Services (DHHS) filed a petition alleging that it had taken the child (born in July 2000) into custody (§ 305) because he was at substantial risk of serious physical harm. The petition alleged that his mother had failed to protect him from domestic violence that her husband had committed in the child's

² Hereafter, undesignated statutory references are to the Welfare and Institutions Code.

³ As a result of requests from the reporter and the parties for extensions of time, the father did not file a reply brief until 271 days after his notice of appeal, which has prevented this court from determining the appeal within the prescribed 250-day period. (Cal. Rules of Court, rule 8.416(e) [undesignated rule references are to this source]).

presence. (§ 300, subd. (b).) The petition listed an East Palo Alto address for Elijah B. as an alleged father.⁴

At the detention hearing (§ 315), the juvenile court placed the child with the DHHS and set a combined jurisdictional and dispositional hearing (§§ 355, 358). It indicated the need to determine Elijah B.'s paternity.

The social study for the combined hearing included a DHHS interview with Elijah B. He was living with his pregnant girlfriend in San Jose and his three-year-old son, presumably providing the address listed in the report in San Jose on "Viamonte Circle" in zip code 95118. Elijah B. asserted that he was the biological father of the child, although his name might not be on the birth certificate.⁵ He and the mother met as teenagers; she became pregnant with the child a month later. He assaulted her during her pregnancy, which brought an end to their relationship before the child's birth. As a result, he was jailed and had to complete a one-year anger management program. After they broke off their relationship, the child stayed with the mother.⁶ He had not had any contact with the

⁴ According to the report for the detention hearing, the mother did not have an address for Elijah B. other than his parents' home in East Palo Alto, as she did not have any contact with him since 2006.

⁵ The mother confirmed that she did not put the father's name on the birth certificate because he was in custody at the time of the minor's birth.

⁶ The maternal grandmother told the social worker that she had taken responsibility for raising the minor in order to allow the mother to finish school.

child since 2006, after the mother's marriage to the stepfather. After recently assaulting an ex-girlfriend, he was presently attending classes on domestic violence and anger management again. He had also been convicted of possessing marijuana for sale, but had completed outpatient treatment after his release from custody. He had paid child support but was not current on his obligations. He wanted the child placed in his custody and expressed willingness to participate in services, but did not object to a placement with a maternal great-grandmother.⁷

Elijah B. appeared at the initial combined hearing in June 2007, and the court appointed counsel for him. Based on the representations of the parties,⁸ the juvenile court found Elijah B. was the "adjudicated father"⁹ of the child. The

⁷ The study had recommended placement with the great-grandmother while the mother and Elijah B. received services for identified parental shortcomings. The child told the social worker that he had not seen his father in a long time and preferred to live with his grandmother and great-grandmother.

⁸ As confirmed in a subsequent response to the court's parentage inquiry, there was a registered order for child support based on the mother's declaration identifying Elijah B. as the biological father.

⁹ The parties embrace this term in their briefs. It departs from standard usage in dependency proceedings, which recognize four paternal categories: *de facto* (acting in loco parentis), *alleged* (a reputed biological father), *natural* (an established biological father), and *presumed* (one who, in the absence of marriage or attempted marriage to the mother, or lacking a joint declaration with the mother of his paternity, has received a minor into his home and openly declared the paternity). (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802 (*Jerry P.*)). While clarity is defeated in deviating from standard terms of art, in *this* opinion we will conform to the employment of the term as an

father's attorney identified a designated mailing address (§ 316.1) as "Viamonte Court"¹⁰ in San Jose, and the court directed a change in the records to reflect this.¹¹ The court continued the hearing.

The court allowed DHHS to file an amended petition in August 2007. This added allegations that the mother's recent and historic abuse of alcohol and the father's history of domestic violence (with both the mother and the ex-girlfriend) put the child at risk of serious physical harm.

In a July addendum to the social study focused only on the mother and stepfather, the mother expressed surprise at the father's appearance in the proceedings, claiming that he had seen the child only five times since birth. An August addendum also did not discuss the father at all. In October and November 2007 addenda, DHHS reported that the father had been participating in services (with some scheduling difficulty). He had a September visit with the child in the Bay Area, which went well; the child disliked the long car ride and refused to go for a second visit. The maternal grandmother and the father agreed

equivalent of natural father.

¹⁰ We note, without formally taking judicial notice of street maps as matters beyond the subject of reasonable dispute (*People v. Martinez* (1978) 82 Cal.App.3d 1, 24), that we have not been able to identify any such street in the 95118 zip code in San Jose. There is a Via Monte Drive, but neither "Viamonte Circle" nor "Viamonte Court."

¹¹ Despite this discussion on the record, the court clerk continued to send notices of these and almost all subsequent hearings and orders to the East Palo Alto address.

to schedule visits twice a month, alternately in Sacramento and the Bay Area. In late October, a social worker encouraged the father to call the child regularly and contact the maternal grandmother regarding the scheduling of visits. DHHS provided Greyhound bus tickets to facilitate the father's trips to Sacramento.

At the combined hearing on the amended petition in November 2007, the juvenile court sustained the new jurisdictional allegations against the mother and the father and struck the original allegations pursuant to the stipulation of the parties. The court made another unavailing instruction to its clerk to send notices to the father at the San Jose address. The court ordered the placement of the child with the maternal great-grandmother, and the participation of the mother and the father in services. It set a six-month review hearing (366.21, subd. (e)) for January 2008.

The report for the six-month review noted visits between the child and the father in Sacramento in November and San Jose in December. The child enjoyed the visits but did not like the long ride to the Bay Area. In-home assessments of the father's home found it clean and well-kept; the father was living with his girlfriend, his four-year-old son, and his infant son. He worked as a carpenter, supplementing his income with AFDC. The father was cooperative with services, but had made only minimal efforts to develop his relationship with the child or visit him. The father attributed this to his hectic schedule. The report recommended that he needed to increase visitations to improve

his bonding with the child, but was entitled to an extension of services.

At the January 2008 review hearing, the court maintained the permanent plan of a return to the mother's custody. It found that the father continued to participate in services, but was not keeping up regular visits with the child. It calendared a 12-month review hearing for July 2008.

The June 2008 report for the 12-month review commended the father's progress in completing services. However, his visits with the child were infrequent and took place only in the Bay Area in January and February 2008 when the child was brought to him; he did not make use of the bus tickets given to him or his car to come to Sacramento. The report did not think the father had demonstrated that he was willing or able to take the child into his home despite exhaustion of services. It also believed continued provision of services to him would be redundant in light of the recommended return of the child to the mother's custody.

At the July 2008 12-month review hearing, the court found that a return of the child to the mother's custody would not create a substantial risk of detriment to his safety, and ordered a plan of dependent supervision. It found the father's progress in services was significant, and did not follow the recommendation to terminate the father's services. The court set the matter for a review hearing under section 364 in January 2009.

In October 2008, DHHS filed a supplementary petition

(§ 387) to remove the child from the mother's custody, based on recurrent domestic violence between the mother and stepfather since the return of the child to the home. After the arrest of the stepfather on criminal charges, DHHS had first learned of ongoing calls regarding disturbances at the home over the previous months. The petition did not allege any conduct on the part of Elijah B.

At the supplementary initial hearing in November 2008, the court placed the child with the maternal grandmother (who was now living with the great-grandmother).¹² In the November 2008 social study for the scheduled hearing on the supplementary petition, DHHS asserted that it had not been able to reach the father by phone, and had sent a letter to the father at his last known address. Its assessment of the father simply repeated the contents of the original June 2007 social study (rather than the most recent assessment). DHHS was not making any arrangements for the father's visitation with the child, and the report recommended that the father not be offered services because he failed to contact DHHS about the current matter. It also recommended denial of additional services to the mother pursuant

¹² In a February 2009 phone conversation with the social worker, the father claimed he had not been aware of "the hearing" at which the court placed the child with his grandmother, and had thought the mother still had custody. In a March 2009 meeting with a social worker at the time of his first documented visit with the child in a year, the father admitted losing touch with the child, DHHS, and his attorney after the transfer of the minor to the mother in July 2008.

to the 12-month limit in section 361.5, subdivision (a)(1) and her failure to have benefitted from past services. An addendum did not discuss the father at all, beyond noting in its case plan that he had met past service objectives.

Father's attorney was present without him at the December 2008 hearing in which the mother submitted the question of jurisdiction on the social study report. The court sustained the allegations.

At the January 2009 dispositional hearing, the father's attorney was present without him. The father's attorney expressed his ignorance about the whereabouts of his client. The court terminated services to the mother and the father, and set adoption or guardianship as the permanent plan. Counsel for father entered his objection without raising any other issue. The court set a hearing on the permanent plan for May (§ 366.21, subd. (g)(2); Rule 5.565(f) [where child returned to home at 12-month review, court must set hearing on permanent plan after sustaining a subsequent section 387 petition unless substantial probability of child's return within six months]). It directed that "writ advisement [see § 366.26, subd. (l)(3)(A); Rule 5.600(b)] is to be sent to the parents at last known address."

A copy of the court's order, notice of the right to writ review of the order, and notice of the May hearing were once again sent to East Palo Alto. Subsequent efforts to serve the father personally with notice of the May hearing at the San Jose address over the course of six days were unsuccessful; the process server finally effected substituted service, leaving a

copy with an adult female who asserted that she lived there with the father.¹³ At a March status hearing, the court confirmed that notice of the May permanency planning hearing had been perfected and confirmed the date.

The report for the permanency planning hearing described the limited contacts between the child and the father during the dependency. There had been an additional visit in March 2009 at a park, after which the father attended a picture-taking session for the child's baseball team. The father did not follow through with plans to meet with the child in April in Sacramento, and was trying to arrange a visit in San Jose. The child said he enjoyed visiting with his father, but preferred to have his grandmother present for the visits. The child was healthy and developmentally on target. He was doing well at school, requiring some tutoring in math and reading but was not receiving any special education services. He was respectful and well-mannered without any behavioral issues. Although the minor wanted to be able to visit with his parents, he wanted to continue living with his grandmother (with whom he had a parent-child relationship since birth) and his younger half siblings (now numbering two, both of whom had also been removed from the

¹³ In an April 2009 phone call to the social worker, the father's girlfriend indicated that she had "called the court regarding an appeal," which referred her to the social worker, who told her and the father to speak to his attorney. It is not specified what triggered this inquiry about an appeal, or what they sought to appeal. The father also claimed he was having trouble reaching his attorney.

mother's custody). He was experiencing anxiety about the effect of adoption, as he thought this meant going to live with strangers; he was receiving counseling on this fear. The report concluded that the child was thriving in the home. The grandmother's home more than adequately met the child's needs, and she was committed to giving him a safe and stable home through the plan of adoption while maintaining the child's contacts with the mother and father. Therefore, the assessment recommended that the court proceed with the plan of termination of parental rights and adoption. An addendum noted the continuing difficulties of scheduling visitations with the father, but that the child seemed to enjoy one that finally took place in late May.

Following a continuance, the court held the hearing in June 2009. The father's attorney did not know why the father did not appear.¹⁴ Counsel for the parents submitted the matter without calling further witnesses; the father's attorney objecting to the termination of parental rights and the mother assenting to it. The court found the child was eminently adoptable (his only issue being anxiety over his mistaken interpretation of the effect of adoption), the proposed adoptive parent had raised him from birth, and she wanted the child to benefit from continued contact with his parents. The parents,

¹⁴ Counsel had waived the father's presence three days earlier at a pretrial hearing because he had transportation problems. The father had appeared at the originally-set hearing date in May.

on the other hand, had failed to identify any detriment to the child in termination of their parental rights, or that any exception to termination applied. The juvenile court cited in particular the lack of significant visitation between the father and child or anything more than a friendly bond between them that was not significant enough to outweigh the benefits of stability and permanence that the proposed adoptive home offered.

DISCUSSION

I.

A

The father did not seek writ review of the order setting the hearing on the permanent plan (§ 366.21, subd. (g)(2)); this ordinarily forfeits the right to contest any issue relating to that order in an appeal from the subsequent order implementing the permanent plan (§ 366.26, subd. (l)(2); *In re Cathina W.* (1998) 68 Cal.App.4th 716, 719-720). However, a juvenile court's failure to provide notice by mail of the right to seek writ review to a parent not personally present at the hearing "relieve[s]" the parent from the application of this statute. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 625.)

DHHS asserts that we should assume notice to the father's *parents* resulted in actual notice to the *father*, absent evidence to the contrary. DHHS does not provide any authority for departing from the provisions of section 316.1 for designating an *address of record* that the court and the DHHS *must* use for notice purposes, or the direction that notice of the right to

writ review *must* be sent to the "last known address." (Rule 5.600(b)(1).) Here, the father designated the San Jose address (of which DHHS was well aware) *twice*, in open court. Having satisfied this duty, the consequences of a failure to receive notice were not the father's to bear. (Compare *In re Rashad B.* (1999) 76 Cal.App.4th 442, 450 [*failure to designate address would place burden of consequences of missed notice on parent*].) DHHS also argues the error in notice is harmless,¹⁵ because the social worker's notes about the phone call with father's girlfriend indicated that she asked in April 2009 about an "appeal." However, as we mentioned above (fn. 13, *ante*), this double hearsay does not affirmatively indicate what might have triggered the query, nor what exactly was the object of the appeal. (For all we can tell, this may have been an effort to determine in advance the manner in which to appeal the order implementing the permanent plan.) This fails as a result to demonstrate receipt of the prescribed *notice of writ review*. The father may therefore raise an issue involving the January 2009 setting order.

B

We attempt to unravel the tangled skein of the father's

¹⁵ We note that *In re Ryan R.* (2004) 122 Cal.App.4th 595, 599, assumed the existence of a duty to notify an absent parent by mail of her right to appeal an order terminating her parental rights, and then found a misdirected notice of the order and the right to appeal was harmless because she had in fact placed an untimely call to her attorney to direct the filing of a notice of appeal.

arguments regarding the flaw in the setting order. He asserts he should be "considered" a presumed father, based on the order for child support and the fact that he received reunification services,¹⁶ citing *Jerry P. and Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 627-628 (*Robert L.*). He then adverts to the provision under which a juvenile court must find that there are not any means to protect a child other than removal from the custody of a nonoffending parent (§ 361, subd. (c)(1); *In re Isayah C.* (2004) 118 Cal.App.4th 684, 695, 697; *In re Paul E.* (1995) 39 Cal.App.4th 996, 1003 [section 361 applies in proceedings on supplementary petition]), although he elsewhere acknowledges that he is **not** a nonoffending parent and does not refer again to this provision in his reply brief. He also invokes the provision requiring a child's placement with a noncustodial parent on removal from a parent absent a finding of detriment to the child (§ 361.2, subd. (a)), a finding the juvenile court did not make in its order and one he argues that we cannot infer (citing *In re Marquis D.* (1995) 38 Cal.App.4th

¹⁶ He also cites "the undisputed fact the minor lived with [him] for the first two years of [his] life." This fact, however, is far from "undisputed": it appears only in the social worker's notes of the March 2009 conversation with the father, in which he bemoaned the imminent termination of parental rights and complained that the child "was taken away from him at age 2 to come to Sacramento." In light of the repeated references in the various reports to the grandmother's primary custody of the child from the time of his birth, this remark can signify only an allusion to *contact with* the child, not to some *custody of* the child that is uncorroborated elsewhere. In any event, it is most emphatically **not** an undisputed fact.

1813, 1824-1825 [where no showing that court even considered proper statute, should not infer finding from evidence at hearing]). Finally, he argues that he may raise these issues initially on appeal because they relate to the sufficiency of the evidence to support the order. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560-1561 (*Gregory A.*)). These arguments all collapse for want of a proper initial premise.

At the time of the original jurisdictional hearing, the juvenile court found that Elijah B. was an "adjudicated" father of the child. Elijah B. did not attempt to establish that he was a presumed father, or a "quasi-presumed" father (one who had been thwarted from establishing that status through no fault of his own (*Jerry P.*, *supra*, 95 Cal.App.4th at p. 797) who is accorded equal status under dependency law. (*Id.* at pp. 797, 810, 812.) As an "adjudicated" father, Elijah B. did not have any *right* to custody or reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451 (*Zacharia D.*); see *Jerry P.*, *supra*, at p. 797, fn. 1.) His rights in the proceedings were thus limited to establishing that he was a presumed (or quasi-presumed) father. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.)

The fact that DHHS provided him with reunification services to which he was not entitled (*Jerry P.*, *supra*, 95 Cal.App.4th at p. 801; *Robert L.*, *supra*, 45 Cal.App.4th at pp. 627-628) does not act as some sort of species of estoppel to deny him the status of presumed father, because an "adjudicated" father *may* receive services if the child would benefit as a result.

(§ 361.5; *In re Raphael P.* (2002) 97 Cal.App.4th 716, 726, fn. 7.) His opening brief does not provide any cogent analysis under which the provision of services to him satisfied the elements of traditional estoppel, and his invocation of judicial estoppel for the first time in his reply brief is both untimely (*Beane v. Paulsen* (1993) 21 Cal.App.4th 89, 93, fn. 4) and inapt: he fails to demonstrate that DHHS attempted to gain any sort of litigation advantage in these proceedings at any point on the basis of his status as a presumed father and is now attempting to argue the contrary on appeal. (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986.)

He otherwise does not provide any authority for claiming this status for the first time on appeal. On the contrary, he failed to appeal from the subsequent dispositional judgment (or orders on the review hearings) to raise this or any other issue, so he may not seek to contest this finding at the jurisdictional hearing in the present appeal from an even later order. (*In re John F.* (1996) 43 Cal.App.4th 400, 404-405.) As for proceedings after the appealable order from the 12-month review embraced in the present appeal, he never litigated his status as a presumed father in the juvenile court at any point. He has consequently forfeited any claim in the present appeal based on that status (cf. *In re Jason J.* (2009) 175 Cal.App.4th 922, 932 [cannot claim status as quasi-presumed father for first time on appeal]; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 582 [cannot seek to establish alternative status as quasi-presumed father for the first time on appeal].) We also decline to exercise discretion

to entertain a forfeited claim, as this is reserved only for extraordinary circumstances where there is an important *question of law* and where this would not interfere with the concerns that underlie dependency proceedings. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) As a result, even ignoring his self-acknowledged recognition that he is not a nonoffending parent (§ 361, subd. (c)(1)), or the restriction of section 361.2 to presumed fathers immediately competent to assume custody (*Zacharia D.*, *supra*, 6 Cal.4th at p. 454), Elijah B. cannot assert these issues in his appeal.

II.

The father argues that there is insufficient evidence of the child's adoptability because he required some tutoring, was a nine year old who had some difficulty listening and following directions, and was anxious that the process of adoption would lead to him living with strangers. The father also asserts that the child was an older child of mixed heritage and thus is akin to those foster children whom the Legislature has identified as facing barriers to adoption (citing a provision for financial aid to prospective adoptive parents of such children (§ 16120, subd. (a)(1))). Thus, he purports to find fault with the prospective adoptive home.

A

While the father did not contest the child's adoptability in the juvenile court, this does not forfeit the legal issue of whether there is substantial evidence to support the juvenile court's finding. (*Gregory A.*, *supra*, 126 Cal.App.4th at

pp. 1560-1561.) However, any challenge on the facts of this case to the court's finding that the child is adoptable borders on the frivolous.

Before a court may select adoption as the permanent plan, it must find by clear and convincing evidence that a child is likely to be adopted after terminating parental rights. (*In re Tabitha G.* (1996) 45 Cal.App.4th 1159, 1164; § 366.26, subd. (c)(1).) The fact that the burden of proof for the trier of fact is clear and convincing evidence does not affect in any way our assessment of substantial evidence (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154 (*Lukas B.*)) any more than where proof beyond a reasonable doubt is required (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214). We therefore manifestly do not need to bear the standard of proof in mind, as the father urges.

Even if the facts that the father has highlighted could be considered "impediments" to adoption, which they are not, the prospective adoptive home was well aware of them and the adoption assessment did not identify them as severe enough to pose any obstacle to adoption. Therefore, they do not undermine the finding of adoptability. (*Lukas B., supra*, 79 Cal.App.4th at p. 1154.) The interest of a specific prospective placement in adopting a child generally indicates that a child is adoptable within a reasonable time, even if eventually by someone else. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650; *Lukas B., supra*, at p. 1154.)

B

Turning to the father's arguments regarding the prospective adoptive home, we first note that his failure to raise the issue in the juvenile court forfeits his claim (admixd under the heading of insufficient evidence) that the adoption assessment report did not comply with the criteria in section 366.21, subdivision (i)(1). (*Gregory A.*, *supra*, 126 Cal.App.4th at p. 1560; *In re G.M.* (2010) 181 Cal.App.4th 552, 564 (*G.M.*).) The case of *In re Valerie W.* (2008) 162 Cal.App.4th 1 (*Valerie W.*), which the father repeatedly cites in criticizing the present adoption assessment study, does not acknowledge this forfeiture principle in reaching flaws in an assessment report for the first time on appeal. (*Id.* at pp. 4, 10-11, 13-14.) Accordingly, we decline to follow its lead.

In addition, the father's failure to raise the issue of any legal impediment that might make the prospective adoptive home ineligible to adopt the child¹⁷ forfeits *that* issue on appeal as well. (*G.M.*, *supra*, 181 Cal.App.4th at pp. 563-564.) The authority that a juvenile court must consider the issue of legal impediment on its own motion because it is essential to support an assessment report's conclusion that a child is adoptable (see *G.M.*, *supra*, at p. 564 [citing our decision of *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408-1409, 1410]), applies *only*

¹⁷ This is distinct from disputing a prospective adoptive home's *suitability*, an issue reserved for adoption proceedings. (*G.M.*, *supra*, 181 Cal.App.4th at p. 563.)

where the existence of the potential placement is the sole basis for a finding of adoptability (*G.M., supra*, at p. 564; *In re Scott M.* (1993) 13 Cal.App.4th 839, 844 (*Scott M.*)).¹⁸ This is so because the focus in adoptability is otherwise on the characteristics of the child, not the prospective adoptive parents (*Scott M., supra*, at p. 844; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061-1062 [child with complete developmental disability; adoptable *only* because specific adoptive home willing to adopt him, so must inquire into suitability of prospective adoptive placement to care for child]). Since we have upheld the finding that the child ***is*** generally adoptable, the father cannot either raise or prevail on his contentions relating to the prospective adoptive home.

DISPOSITION

The judgment is affirmed.

CANTIL-SAKAUYE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.

¹⁸ This might explain *Valerie W.* reaching the issue initially on appeal (162 Cal.App.4th at pp. 15-16); we decline to follow any suggestion the issue is otherwise cognizable on appeal where it was not raised in the juvenile court.